



PATENT
02811-P0005C WWW/TMO

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Ralph D'Agosta
Application No. 10/606,414	Filing Date: June 26, 2003
Title of Application:	Portable Heated Water Dispensing Device
Confirmation No. 5674	Art Unit: 2836
Examiner	Ronald W. Leja

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief Under 37 CFR §41.37

Dear Sir:

A Notice of Appeal from the final rejection of Claims 1-17, all pending claims of U.S. Patent Application No. 10/606,414, being filed herewith, Applicant also files its Appeal Brief. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

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August 11, 2006

Ellise J. Kuban
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(i) Real Party In Interest

The real party in interest is America's Acres, Inc.; 87 New Preston Road;
New Preston, CT 06777.

(ii) Related Appeals and Interferences

There are no related Appeals or Interferences.

(iii) Status Of Claims

Claims 1-17, all pending claims of the present application, stand rejected and are the subject of the instant Appeal. A copy of each of these claims is attached hereto in the Claims Appendix.

(iv) Status Of Amendments

On July 10, 2006, Applicant filed a Response to the Final Office Action dated May 26, 2006. The Response contained amendments which were denied entry.

(v) Summary Of Claimed Subject Matter

Claims 1, 12 and 17 are the independent claims.

Independent Claim 1

Claim 1 is directed to a portable water heating system 10 which includes a housing 14 with an inside and an outside, the housing 14 being adapted to be portable to store and transport water received therein. See, e.g., Spec. ¶¶ 0032, 0044-0045 and Figs. 1, 7A-7C. A water inlet 16 is disposed on the outside of the housing 14, and a first hose nipple 22 is attached to the water inlet 16, the first hose nipple 22 being adapted to connect a water source to the system 10. See, e.g., Spec. ¶¶ 0035, 0043 and Fig. 1. A heating element 26 adapted to heat water is disposed inside the housing 14, as is a lining 28 which is adapted to protect the inside of the housing 14 from water corrosion. See, e.g., Spec. ¶¶ 0037, 0039 and Figs. 4, 8A. A water outlet 18 is disposed on the outside of the housing 14, and a second hose nipple 24 is attached to the water outlet 18, the second hose nipple 24 being adapted to connect a fluid conduit for heated water distribution. See, e.g., Spec. ¶¶ 0036, 0043 and Fig. 1.

Independent Claim 12

Claim 12 is directed to a portable water heating system 10 which includes a housing 14 with an inside and an outside, the housing 14 being adapted to directly hold water and to transport water stored therein. See, e.g., Spec. ¶¶ 0032, 0044-0045 and Figs. 1, 7A-7C. A water inlet 16 is disposed on the outside of the housing 14, and a first hose nipple 22 is attached to the water inlet 16, the first hose nipple 22 being adapted to connect a water source to the system 10. See, e.g., Spec. ¶¶ 0035, 0043

and Fig. 1. A heating element 26 adapted to heat water is disposed inside the housing 14, as is a lining 28 which is adapted to protect the inside of the housing 14 from water corrosion. See, e.g., Spec. ¶¶ 0037, 0039 and Figs. 4, 8A. A water outlet 18 is disposed on the outside of the housing 14, and a second hose nipple 24 is attached to the water outlet 18, the second hose nipple 24 being adapted to connect a fluid conduit for heated water distribution. See, e.g., Spec. ¶¶ 0036, 0043 and Fig. 1. The system 10 also includes an adjustable thermostatic control 38 controlling the output of the heating element 26, a first ground fault protection device 40 disposed between an external electrical supply and the adjustable thermostatic control 38, and a high temperature shutoff element located in the adjustable thermostatic control 38, the high temperature shutoff element protecting the system 10 by shutting the system 10 down when a predetermined threshold temperature has been exceeded. See, e.g., Spec. ¶¶ 0039, 0040 and Figs. 5, 6.

Independent Claim 17

Claim 17 is directed to a method of increasing safety when using a portable water heating system 10, including the steps of: (i) providing a portable water heating system 10 with a heating element 26 (see, e.g., Spec. ¶ 0039 and Fig. 4); (ii) controlling the heating element 26 operation with an adjustable thermostatic control 38 (see, e.g., Spec. ¶ 0039 and Fig. 6); (iii) providing a ground fault detecting device 40 between the adjustable thermostatic control 38 and the external electrical supply (see, e.g., Spec. ¶

0040 and Fig. 5); and shutting off the system 10 with a high temperature shutoff element forming a part of the adjustable thermostatic control 38, when a predetermined threshold has been exceeded (see, e.g., Spec. ¶ 0039 and Fig. 6).

(vi) Grounds Of Rejection To Be Reviewed On Appeal

Claims 1 and 2 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez (U.S. Patent No. 2,861,170).

Claims 4-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. (U.S. Patent No. 4,947,025).

Claims 3, 7, 8 and 12-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. and further in view of Winter et al. (U.S. Patent No. 6,628,894).

Claims 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Nelson (U.S. Patent No. 4,974,551).

(vii) Argument

All claims stand rejected either under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,861,170 to Rodriguez, or under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of various secondary and tertiary references. Applicant respectfully asks the Examiner to reconsider these rejections in view of the following Remarks.

Claim 1

Claim 1 of the present application requires, *inter alia*, a housing with an inside and an outside, the housing adapted to be portable to store and transport water received therein. Thus, Applicant's portable water heating system requires that the housing, which heats and holds the heated water, is portable (i.e., not fixed to elements external thereto), and that it be adapted to store water for later use and to transport that stored water when and to the where its use is desired. (See Application at ¶¶ 0009,0043).

In contrast, Rodriguez is directed to a water heating attachment for cold water pipes that is fixed to a pipe for support, and thus, is not adapted to store and transport water to a desired location. (See Rodriguez, col. 1, lines 71-72; col. 2, lines 2-3.) Rodriguez's heating attachment includes a tank capable of holding two-gallons of water while attached to supply pipe, which is non-portable (i.e., it is not adapted to be filled

with water, heat the water and then transported elsewhere for dispensing the heated water), and is only intended to be used to heat and dispense water when it is so fixed to a cold water pipe, for instance, the supply pipe of a shower. (See Rodriguez, col. 4, lines 26-30.) Rodriguez is not adapted to transport water held within its tank. Thus, Rodriguez fails to disclose, teach or suggest a housing adapted to be portable to store and transport water received therein, as required by Claim 1.

In the Final Office Action dated May 26, 2006, the Examiner cites Column 1, lines 26-27 of Rodriguez as disclosing the above-highlighted limitations of Claim 1. Applicant respectfully disagrees. The cited portion of Rodriguez merely states that: "A further object is to make a portable shower attachment for bathrooms, etc." (emphasis added). Applicant respectfully submits that even this statement recognizes that Rodriguez is directed to a shower *attachment* (i.e., a device that is used to heat and dispense water when it is fixed to a cold water pipe). Thus, there is absolutely no disclosure, teaching or suggestion that the Rodriguez device is intended to be used, or even capable of being used, to store and transport water received therein. At most, Rodriguez simply discloses that the device disclosed therein may be moved from one location to another, assembled into the plumbing at the new location, and *then* filled with water, which can *then* be heated and dispensed.

In view of the above, Applicant respectfully submits that Claim 1 is neither anticipated by, nor obvious over, Rodriguez.

Claim 2

Claim 2 depends from Claim 1, and therefore Applicant respectfully submits that Claim 2 is patentable for the reasons discussed above with respect to Claim 1. Moreover, Applicant respectfully points out that Claim 2 adds further limitations that make it even more clearly patentable over the cited prior art. More specifically, Claim 2 requires, *inter alia*, an adjustable thermostatic control controlling the output of the heating element.

Applicant respectfully submits that the main cited reference, Rodriguez, does not disclose, teach or suggest this element in any way. Applicant acknowledges that Rodriguez discloses a thermostat which acts as a safety device by opening the circuit of the heating coil when the temperature of the valve chamber rises to a predetermined point. (See Rodriguez at col. 3, lines 63-71.). The Examiner appears to be attempting to characterize this pre-set thermostat as somehow being “an adjustable thermostat,” as is required by all claims, and stated, in the Final Office Action of May 26, 2006, that: “This in the broad reasonable interpretation is an adjustable control (since threshold is predetermined) for the output of the heating element (opening the circuit leads to no output) as merely required by instant Claim 2 language.” Applicant respectfully disagrees.

Applicant acknowledges that, during examination, pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). However, this basic precept of patent examination does not mean that examiners are free to stretch the meaning of claim terms as far as they desire, and without limitation, in order to cover the teachings of the prior art. Rather, an examiner's interpretation of claim terms must be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

Here, Applicant respectfully submits that the term "adjustable thermostat" is a term that would be familiar to a person having ordinary skill in the art, and that such a person having ordinary skill in the art would understand the term to mean a thermostat that is adjustable by a user so that at least two (and typically many) set points can be selected by a user. Applicant further respectfully submits that a person having ordinary skill in the art would not understand a thermostat having a (i.e., one) predetermined threshold to be an "adjustable" thermostat. Rather, one skilled in the art would clearly understand the safety thermostat included in the Rodriguez device to be a non-adjustable thermostat, which are non uncommon in safety related applications.

In view of the above, Applicant respectfully submits that Rodriguez, with its teaching of a non-adjustable safety thermostat, having a single predetermined

threshold setting, can not possibly anticipate any claim of the present application, since all claims thereof require “an adjustable thermostat” controlling operation of the heating element.

In the Advisory Action, the Examiner again attempts to justify his overly broad interpretation by stating:

Applicant’s arguments are not convincing in that the Examiner’s position with respect to the interpretation of the adjustable thermostat (having a predetermined set point) of Rodriguez (see Final Rejection of 5/26/2006) is considered to be reasonable and in line with the understanding of one having ordinary skill in the Art. It appears that the interpretation of an adjustable thermostat by Applicant (see Applicant’s remarks of 7/10/2006) imparts a more narrow definition.

However, Applicant respectfully points out that the Examiner appears to be asserting that every thermostat having a set point (whether it is capable of being adjusted by a user or whether it is factory pre-set to a single temperature) would be considered by one skilled in the art to be an “adjustable thermostat.” Since all thermostats by their very nature have a set point, the Examiner is essentially asserting that all thermostats are “adjustable thermostats”, and is thus reading the “adjustable” limitation out of the claims completely. Of course, this is not permissible, as every limitation of a claim must be considered. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) (“All words in a claim must be considered in judging the patentability of that claim against the prior art.”).

Moreover, Applicant is not trying to impart “a more narrow definition” than is justified. Applicant is simply not ignoring the word “adjustable” in the claim and is interpreting the term “adjustable thermostat” as would one of ordinary skill in the art.

Furthermore, Applicant respectfully submits that neither Rodriguez alone, nor Rodriguez when properly combined with any reference, would render obvious the present invention, as claimed.

It is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination or modification. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). It is also well settled that if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

In the present case, not only does Rodriguez provide absolutely no suggestion of the desirability of providing an adjustable thermostatic temperature control, but Rodriguez also expressly teaches away from such a feature. It is one of the main express objects of Rodriguez to “simplify the construction so that a single manually

operated valve will shut off the water or will turn on cold water, or warm water, or hot water as selected by the operator.” (see column 1, lines 19-23). To this end, Rodriguez goes to great lengths to describe a mixing valve which controls how much cold water in an arm is mixed with the heated water that is rising up from the bottom of a tank, and mixing automatically with cold water in the arm. (See Rodriguez at col. 2, lines 47-50; col. 2, line 68 to col. 3, line 2; col. 4, lines 13-18). Thus, a thermostat does not control heating element to in turn control the temperature of the water. Rather, temperature variation and control is achieved by the degree of mixing of two water streams, the heated water in the tank rising up and mixing and the cold water from the arm manually controlled by turning of a valve (not thermostatically controlled). Rodriguez’s thermostat is merely a high temperature safety shut-off.

Thus, one skilled in the art would be taught away from replacing the temperature control valve of Rodriguez with a thermostatic temperature control, since doing so would render the Rodriguez device unsatisfactory for one of its main intended purposes (i.e., providing a single manually operated valve that controls water temperature). As such, one skilled in the art would not modify Rodriguez in such a manner, or combine Rodriguez with some other reference in a way which would result in a device modified in such a manner.

In view of the above, Applicant respectfully submits that Claim 2 is neither anticipated by, nor obvious over, Rodriguez, either when taken alone or when properly combined with the various cited secondary and tertiary references.

Claims 3 and 8

Since Claims 3 and 8 depend, either directly or indirectly from Claim 2, Applicant respectfully submits that Claims 3 and 8 are patentable for the reasons discussed above with respect to Claim 2. Applicant respectfully submits that neither Alston et al. nor Winter et al. discloses anything which would lead one skilled in the art to redesign the Rodriguez device so as to be adapted to store and transport water received therein and/or to replace the single set point safety thermostat disclosed in Rodriguez with the adjustable thermostat required by these claims, particularly in view of the fact that such a modification is taught against by Rodriguez itself.

Claims 4-7 and 9-11

Since Claims 4-7 and 9-11 depend, either directly or indirectly from Claim 1, Applicant respectfully submits that Claims 4-7 and 9-11 are patentable for the reasons discussed above with respect to Claim 1. Applicant respectfully submits that neither Alston et al., nor Winter et al., nor Nelson discloses anything which would lead one skilled in the art to redesign the Rodriguez device so as to be adapted to store and transport water received therein.

Claims 12-16

All of Claims 12-16 require, *inter alia*, a housing adapted to directly hold water and to transport water stored therein, and an adjustable thermostatic control controlling the output of the heating element, in a manner similar to Claim 2 discussed above. As such, Applicant respectfully submits that Claims 12-16 are patentable for the reasons discussed above with respect to Claim 2. Applicant respectfully submits that neither Alston et al. nor Winter et al. discloses anything which would lead one skilled in the art to redesign the Rodriguez device so as to be adapted to hold and transport water received therein and/or to replace the single set point safety thermostat disclosed in Rodriguez with the adjustable thermostat required by these claims, particularly in view of the fact that such a modification is taught against by Rodriguez itself.

Claim 17

Claim 17 requires, *inter alia*, the step of controlling the heating element operation with an adjustable thermostatic control, in a manner similar to Claim 2 discussed above. As such, Applicant respectfully submits that Claim 17 is patentable for reasons similar to those discussed above with respect to Claim 2. Applicant respectfully submits that neither Alston et al. nor Winter et al. discloses anything which would lead one skilled in the art to replace the single set point safety thermostat disclosed in Rodriguez with the

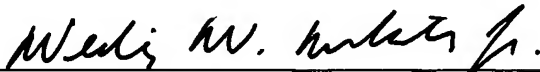
adjustable thermostat required by this claim, particularly in view of the fact that such a modification is taught against by Rodriguez itself.

Conclusion

For the foregoing reasons, Applicant respectfully submits that the claimed invention embodied in each of claims 1-17 is patentable over the cited prior art. As such, Applicant respectfully requests that the rejections of each of claims 1-17 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of claims 1-17.

Respectfully submitted,

August 11, 2006


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**Claims Appendix
to Appeal Brief Under 37 CFR §41.37
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1. A portable water heating system, the system comprising:
 - a housing with an inside and an outside, the housing adapted to be portable to store and transport water received therein;
 - a water inlet disposed on the outside of the housing;
 - a first hose nipple attached to the water inlet, the first hose nipple adapted to connect a water source to the system;
 - a heating element adapted to heat water inside the housing;
 - a lining disposed inside of the housing, the lining adapted to protect the inside of the housing from water corrosion;
 - a water outlet disposed on the outside of the housing; and
 - a second hose nipple attached to the water outlet, the second hose nipple adapted to connect a fluid conduit for heated water distribution.
2. The system of claim 1 further comprising an adjustable thermostatic control controlling the output of the heating element.
3. The system of claim 2 further comprising a first ground fault protection device disposed between an external electrical supply and the adjustable thermostatic control and a high temperature shutoff element located in the adjustable thermostatic control, the high temperature shutoff element protecting the system by shutting the system down when a predetermined threshold temperature has been exceeded.
4. The system of claim 1 further comprising a set of wheels mounted on the outside of the housing.

5. The system of claim 1 further comprising a handle attached to the outside of the housing.

6. The system of claim 5 wherein the handle is selected from the group consisting of a fixed handle, a folding handle, a retractable handle, a molded handle and combinations of these.

7. The system of claim 1 further comprising a mounting element interface located on the outside of the housing, the mounting element interface securing the system to a mounting element when not in use.

8. The system of claim 3 further comprising an insulated barrier surrounding the outside of the housing, a second ground fault protection device disposed between the external electrical supply and the heating element, and wherein no coiled water conducting tube is provided so as to remove an element prone to failure due to clogging from the system.

9. The system of claim 1 further comprising a relief valve disposed on the outside of the housing, wherein the housing comprises a double walled housing and an anode disposed inside the housing, the anode protecting parts located on the inside of the housing from corrosive effects of water.

10. The system of claim 9 wherein an outer wall of the housing is made of a material different than an inner wall of the housing.

11. The system of claim 10 wherein the housing material is selected from the group of materials comprising plastic, metal, metal-alloys, rubber, fiberglass, epoxy, synthetic rubber compounds, latex compounds, polyurethane, fiber resin composite materials and combinations of these.

12. A portable water heating system, the system comprising:

- a housing with an inside and an outside, the housing adapted to directly hold water and to transport water stored therein;
- a water inlet disposed on the outside of the housing;
- a first hose nipple attached to the water inlet, the first hose nipple adapted to connect a water source to the system;
- a heating element adapted to heat water inside the housing;
- a lining disposed inside of the housing, the lining adapted to protect the inside of the housing from water corrosion;
- a water outlet disposed on the outside of the housing;
- an adjustable thermostatic control controlling the output of the heating element;
- a first ground fault protection device disposed between an external electrical supply and the adjustable thermostatic control;
- a high temperature shutoff element located in the adjustable thermostatic control, the high temperature shutoff element protecting the system by shutting the system down when a predetermined threshold temperature has been exceeded; and
- a second hose nipple attached to the water outlet, the second hose nipple adapted to connect a fluid conduit for heated water distribution.

13. The system of claim 12 further comprising a first ground fault detecting device disposed between the external electrical supply and the adjustable thermostatic control and a high temperature shutoff element located in the adjustable thermostatic control, the high temperature shutoff element protecting the system by shutting the system down when a predetermined threshold has been exceeded.

14. The system of claim 12 further comprising a set of wheels mounted on the outside of the housing.

15. The system of claim 12 further comprising a handle attached to the outside of the housing.

16. The system of claim 15 wherein the handle is selected from the group of structures of fixed, folding, retractable, molded and combinations of these.

17. A method of increasing safety when using a portable water heating system, the method comprising:

- providing a portable water heating system with a heating element;
- controlling the heating element operation with an adjustable thermostatic control;
- providing a ground fault detecting device between the adjustable thermostatic control and the external electrical supply; and
- shutting off the system with a high temperature shutoff element forming a part of the adjustable thermostatic control, when a predetermined threshold has been exceeded.

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**Evidence Appendix
to Appeal Brief Under 37 CFR §41.37
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No evidence of any kind, including evidence submitted under 37 CFR 1.130, 1.131 or 1.132, has been entered by the Examiner and relied upon by Appellant in the appeal.

**Related Proceedings Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/606,414**

There are no related Appeals or Interferences. As such, there are no decisions rendered by a court or the Board in any such Appeals or Interferences.